

Global Law Program
Fundação Getulio Vargas
FGV DIREITO SP

Syllabus

Regular courses - 2 months courses
Fall Semester 2018

Global Law Program - Fundação Getulio Vargas

Course: Introduction to Brazilian Legal System

Workload: 30 hours

Credits: 2

Overview:

The main object of this course is to introduce foreign students to the Brazilian Legal system. After a brief overview of the main features of the 1988 Constitution, the course will focus in our system of constitutional review, especially on the role of the Supreme Court. The course will certainly have a comparative perspective, to help students understand the peculiarities of the Brazilian system vis-à-vis their own constitutional systems. The subpart of the *Introduction to Brazilian Legal System* discipline provides an overview of the basic concepts underlying Brazilian tax law. Subjects covered in this introductory course include the assignment of federal and subnational taxes, the main principles and rules of individual and corporate taxation and the tax law treatment of inbound and outbound transactions and investments. Special emphasis is placed on selected issues of Brazilian taxation with an international impact.

The course aims to develop on student's knowledge on the various sources and core concepts of Brazilian tax law, as well as critical analytical skills on the structure of the Brazilian tax system and its policy implications, with a special emphasis on inbound and outbound transactions and investments.

References:

- ✓ Afonso, José Roberto; Barroso, Rafael, BRAZILIAN TAX AFFAIRS (Latin American and Caribbean Law and Economics Association Annual Papers, 2007) (transcript available at: <http://www.escholarship.org/uc/item/1rf7690j>).
- ✓ Rubinstein, Flavio, *Brazil*, in TAX ASPECTS OF FISCAL FEDERALISM: A COMPARATIVE ANALYSIS, (Claudio Sacchetto and Gianluigi Bizzoli, ed.), Amsterdam: IBFD, (forthcoming; an electronic draft will be circulated by the professor).
- ✓ Afonso, José Roberto; Rezende, Fernando, THE BRAZILIAN FEDERATION: FACTS, CHALLENGES AND PROSPECTS (Stanford University Center for Research on Economic Development and Policy Reform, Working Paper 149, 2002) (transcript available at: <http://www.stanford.edu/group/siepr/cgi-bin/siepr/?q=system/files/shared/pubs/papers/pdf/credpr149.pdf>).
- ✓ McLure, Charles E, *The Brazilian Tax Assignment Problem: Ends, Means and Constraints*, in A REFORMA FISCAL NO BRASIL, São Paulo: Fundação Instituto de Pesquisas Econômicas, 45-71 (1993).
- ✓ Schoueri, Luís Eduardo, *National Report: Brazil*, in THE EU AND THIRD COUNTRIES: DIRECT TAXATION (Michael Lang; Pasquale Pistone, ed.), Viena: Linde, 639-681 (2007).
- ✓ CONTRIBUTION TO THE HISTORY OF TAX TREATIES: THE BRAZILIAN EXPERIENCE (2008) (transcript available at: <http://www2.wu-wien.ac.at/taxlaw/events/Conferencepapers/Rust2008/NRRust2008BrazilSchoueri.pdf>).
- ✓ Souza, Celina, *Brazil's Tax System: The Dilemmas of Policy Reform* (Fondation canadienne pour les Amériques Working Paper FPP-05-02, 2002) (transcript available at: http://www.focal.ca/pdf/brazil_tax.pdf).
- ✓ Ter-Minassian, Teresa, *Brazil*, in FISCAL FEDERALISM IN THEORY AND PRACTICE (Teresa Ter-Minassian ed.), Washington: International Monetary Fund, 438-456 (1997).
- ✓ World Bank, BRAZIL: ISSUES IN FISCAL FEDERALISM (Report No. 22523-BR, 2002) (transcript available at: <http://siteresources.worldbank.org/BRAZILINPOREXTN/Resources/3817166-1185895645304/4044168-1186403960425/51IssuesFiscalFederalism.pdf>).

Global Law Program - Fundação Getulio Vargas

Course: International Arbitration

Workload: 30 hours

Credits: 2

Overview:

The main goal of this course is to provide the students with an overview of the legal framework on international commercial arbitration. The focus will be the analysis of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”), which was adopted in Brazil in 2002. The course will discuss in depth the provisions of the New York Convention, particularly the grounds for denying recognition and enforcement of a foreign arbitral award. In such regard, for each session, at least two cases will be studied and discussed: (i) one from Brazil and (ii) one from abroad. With respect to Brazilian case law, the students will study and discuss paradigmatic cases from the Superior Court of Justice (“STJ”), particularly those cases in which the STJ applied the provisions of the New York Convention in exequatur proceedings. As for the teaching methodology, the course will combine lectures and PBL (problem-based learning). Students will be required to read the cases in advance for the classes and will perform a series of activities in the classroom (both individually and in groups) in order to resolve problems posed by the Professor. Problem-solving, the development of advocacy skills for international arbitration, and the crafting of solid legal arguments based on the provisions of the New York Convention are key features of the course.

Introduction to international arbitration

The 1958 New York Convention: history and preliminary remarks

Arbitration agreement: validity, autonomy and competence-competence

Place of arbitration and applicable law

Drafting of arbitration clauses in the context of international arbitration

Grounds to deny recognition and enforcement of foreign arbitral awards according to the New York Convention:

- Art. V (1) (a) Agreement not valid;
- Art. V (1) (b) Absence of proper notice of arbitrator or proceedings or party unable to present its case;
- Art. V (1) (c) Difference not contemplated by or not falling within the terms of the submission to arbitration,
- Art. V (1) (d) The composition of the arbitral authority or the arbitral procedure not in accordance with the agreement of the parties or the applicable law;
- Art. V (1) (e) Award not yet binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.
- Art. V (2) (a) Subject matter of the difference not capable of settlement by arbitration;
- Art. V (2) (b) The recognition or enforcement of the award would be contrary to the public policy.

References:

- ✓ Albert Jan van den Berg, *The New York Arbitration Convention of 1958. Towards a Uniform Judicial Interpretation*. The Hague: TMC Asser Institute, 1981.
- ✓ Albert Jan van den Berg (Ed.), *50 Years of the New York Convention*, ICCA Congress Series n.14, 2008.
- ✓ Emmanuel Gaillard and John Savage (eds), *Fouchard Gaillard Goldman on International Arbitration*, Kluwer Law International, 1999.
- ✓ Gary Born, *International Commercial Arbitration*, Wolters Kluwer Law, 2014.
- ✓ Andreas Lowenfeld, *Lowenfeld on international arbitration: collected essays over three decades*. New York: Juris Publishing, 2005.

- ✓ Bryant G. Garth e Yves Dezalay, Dealing in virtue: international commercial arbitration and the construction of a transnational legal order, Chicago: University of Chicago Press, 1996.
- ✓ Franco Ferrari (ed.). Forum Shopping in the International Commercial Arbitration Context. Munich: SELP Sellier European Law Publishers - NYU Center for Transnational and Commercial Law, 2013.
- ✓ Franco Ferrari (ed.). Limits to party autonomy in international commercial arbitration. Huntington, New York, 2016.
- ✓ Jan Paulsson The idea of arbitration. Oxford: Oxford University Press, 2013.
- ✓ Julian D. M. Lew and Loukas A. Mistelis (eds). Pervasive problems in international arbitration. Kluwer Law International, 2006.
- ✓ Julian Lew, Loukas Mistelis, Stefan Kröll, Comparative International Commercial Arbitration, Wolters Kluwer Law, 2003.
- ✓ Marike R. P. Paulsson, The 1958 New York Convention in Action, Kluwer Law International, 2016.
- ✓ Nigel Blackaby, Constantine Partasides, Alan Redfern, J. Martin Hunter, Redfern and Hunter on International Arbitration, Sixth Edition, Oxford University Press, 2015.

Global Law Program - Fundação Getulio Vargas

Course: Stabilization of international business transactions

Workload: 30 hours

Credits: 2

Overview:

It is a truism to say that international transactions are less secure than domestic ones. Nevertheless, not always the reasons why it happens this way are very clear and it is usual to blame the culture and legal system of the other party. This course aims to throw some light on the question of stabilization of international business transactions through the study of the reasons why state legal systems fall short from fulfilling their regular functions. Therefore, the following issues are discussed: the legal institutional underpinnings of market, the legal and non-legal reasons of lack of confidence, national jurisdiction, applicable law, *lex mercatoria*, social and relational basis of certainty. Sales, carriage and complex contracts are instances to discuss the practical use of the theoretical basis presented.

References:

- ✓ BERNSTEIN, Lisa. Opting out of the legal system: extralegal contractual relations in the diamond industry. *The Journal of Legal Studies*, v. 21, n. 1. 1992.
- ✓ COASE, Ronald. The nature of the firm. *Economica*, v. 4, n. 16. 1937. P. 386-405.
- ✓ GOLDMAN, Berthold. *Frontières du Droit et lex mercatoria*. *Archives de Philosophie du Droit*, n. 9. 1964. P. 177-192.
- ✓ GRANOVETTER, Mark. Economic action and social structure: the problem of embeddedness. *American Journal of Sociology*, v. 91, n. 3. 1985. P. 481-510.
- ✓ MACAULAY, Stewart. Non-contractual relations in business: preliminary study. *American Sociological Review*, v. 28, n. 1. 1963.
- ✓ POLANYI, Karl. The economy as instituted process. In: SWEDBERG; GRANOVETTER (Ed.). *The sociology of economic life*, 2 a Ed. Boulder: Westview. 2001.
- ✓ WILLIANSON, Oliver E. *The Economic Institutions of Capitalism: Firms, Markets, Relational Contracting*. Nova Iorque: Free Press, 1985.
- ✓ ZWEIGERT, K. KÖTZ, H. *An Introduction to Comparative Law*, 3 a Ed. Oxford: Oxford University Press, 1998.

Global Law Program - Fundação Getulio Vargas

Course: Contracts and the CISG

Workload: 30 hours

Credits: 2

Overview:

The aim of the course is offering knowledge of the rules and principles of the CISG, as well as aspects of the international theory and jurisprudence on CISG and of the comparative terminology used.

By comparison with international principles (Principles of European Contract Law (PECL) and UNIDROIT and domestic legislation (U.S. Uniform Commercial Code (UCC) and Brazilian Civil Code), the course objective is to offer concrete analysis of CISG rules through case method, helping students do develop specific competences to deal with international sales contracts.

Students will be introduced to the structure, principles and rules of the CISG so they will become capable to apply the CISG to real life situations.

The course will concentrate on the following main legal topics:

1. Field of application of the CISG, CISG reservations, questions of jurisdiction and domestic law
2. General principles of the CISG and their application
3. Formation of contract (offer and acceptance)
4. Formation of contract (public offer)
5. Rights and obligations of the parties (breach)
6. Rights and obligations of the parties (damages)
7. Risk management and distribution
8. Remedies by breach of obligations

References:

- ✓ DIMSEY, Mariel, FOUNTOLAKIS, Christiana, and SCHWENZER, Ingeborg. International sales law, a guide to CISG. Oxford: Hart Publishing, 2012.
- ✓ GRAZIANO, Thomas Kadner. Comparative contract law. New York: Palgrave Macmillan, 2010.
- ✓ SCHWENZER, Ingeborg (editor). Commentary on the UM convention on the international sale of goods (CISG), 3RD ed. Oxford: Oxford University Press, 2010.
- ✓ MARTINUSSEN, Roald. Overview of international CISG sales law. Lexington, NY: 2006

**Global Law Program
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Syllabus

**Visiting Professor – Short Term Courses
Fall Semester 2018**

Global Law Program - **Visiting Professor**

Course: Environmental Law and Policy

Workload: 15 hours

Credits: 1

Overview:

In this short course, we will survey the ways in which both personal life choices and the legal apparatus of a democratic economy contribute to the perils of our planet, and we will explore possible legal means of reversing environmental trends that are likely to prove catastrophic if allowed to continue. We will draw upon leading theories of justice and schools of moral thought in order to explore the obligations that we owe to one another, to those in countries around the globe, and to the millions of other species with whom we share the shrinking resources of our planet. And we will engage questions about how lawyers, legislators, regulators, and policy-makers might translate those lessons into law. Industrial food production, climate-changing energy production, land use and urban development, deforestation, toxic/inorganic waste disposal, and the extinction of both species and indigenous cultures will constitute concerns of the course. Using examples of regulatory innovation in both the United States and Brazil, we will inquire into innovative means of achieving sustainable practices—from greening the energy sector to developing closed loop agricultural systems to reconceiving our urban spaces and practices. Throughout our discussions we will ask the hard questions raised by these very practical and very immediate legal challenges: What is the value of the natural world? Are we entitled to Nature’s riches, or do we have obligations of stewardship that require conservation? How do we properly allocate scarce resources and who should bear the burden for past excesses that have caused environmental degradation and threaten future shortages? What role might the market play in aiding the legal system in setting incentives to live, work, and consume sustainably?

In addition to drawing on excerpts from respected textbooks on comparative environmental law, we will also read excerpts from books and articles written by legal scholars, economists, philosophers, scientists, urban planners, and environmental journalists. And we will have opportunities for more “active learning.” We will watch short documentaries that will take us to places that we cannot go in person, and if possible, we will take at least one field trip to a local site that makes salient questions about the sustainability of our daily practices. (NOTE: In past courses, I have taken students to water treatment facilities, power plants, organic farms, large animal confinement facilities, mountaintop removal mining sites, fracking operations, large wind-power farms, etc.) All course materials will provide in booklet form and will also be available electronically.

References:

Will be assigned.

Global Law Program – **Visiting Professor**

Course: Corporate governance and Shareholders' Position and Protection under a Comparative Point of view

Workload: 15 hours

Credits: 1

Overview:

The course intends to underline the basic elements of corporate governance of public companies, and to highlight the main problems related to the Shareholders' position and protection – included the dialogue with the Stakeholders and Society – both in civil and in common law contexts.

The course will be divided into five fundamental sections, each of them corresponding to a daily class. The first class intends to offer a preliminary overview on the most important profiles of corporate governance through the study of the following topics:

- Agency Theory
- Nexus of Contracts Theory
- Separation between ownership and control in Modern Corporation.

Class 2 to 4, will be focus on the following issues:

- Institutional Inverstors/Shareholders and Proxy Advisors
- Remuneration of Directors and “*Say on Pay Rule*”
- Related Parties Transaction

Class 5 will be tailor-made to another very important and current subject: Corporate Governance of Banks.

References:

To be assigned

Global Law Program - Visiting Professor

Course: The Legal regulation of AI and Robotics

Workload: 15 hours

Credits: 1

Overview:

The course introduces students to the legal and regulatory issues raised by the increasing use of automated and autonomous devices. As we increasingly allow sophisticated and partially autonomous machines to make decisions for us, this raises significant problems for our legal concepts of liability, responsibility, and ultimately legal personhood. Furthermore, since robots rely on sensors to perform their tasks, they also raise issues of data protection and privacy. The legal issues raised by autonomous agents that conclude contracts online on behalf of their owner will be discussed, as will be the regulatory issues of care/companion robots in a medical setting, self-driving cars and the automated city; and military applications such as drones. The course covers both embodied artificial intelligent systems ('robots') and non-embodied devices ('autonomous agents'). Legal ramifications of these technologies are studied also with a view on their political, economic and ethical implications. Special attention will be given to efforts to create an international legal regime and associated proposals to standardize legal responses to robot technology globally. Students will be introduced to generic attempts to regulate robotics on national and international level, including the EU proposal for a civil liability regime for robotics and the US proposal for an Algorithm Oversight Authority and the proposed UN moratorium on robots in armed conflict and also to attempts to regulate specific autonomous technologies, covering amongst others the legislative proposals for autonomous cars from Germany, the UK, the US, South Korea and Japan.

In addition to gaining a deeper understanding of the specific legal issues that are created by a number of particularly important applications of robotics and autonomous agent technology, students will also acquire a generic understanding of the types of problems that emerging technologies raise for the theory of regulation. They will gain an understanding of the limits of regulation by law and the ability to evaluate comparatively other modes of regulation for a given problem. Increasingly, lawyers working globally on issues of technology regulation have to work in interdisciplinary and cross-jurisdiction teams, and part of the teaching will help prepare students for this type of activity.

References:

- ✓ B-J Koops, M Hildebrandt, D-O Jaquet-Chiffelle, "Bridging the Accountability Gap: Rights for New Entities in the Information Society?" (2010) 11:2 Minnesota Journal of Law, Science & Technology 497-561
- ✓ J K Gurney, "Sue My Car Not Me: Products Liability and Accidents Involving Autonomous Vehicles" (2013) 2013:2 University of Illinois Journal of Law, Technology & Policy, 247-278
- ✓ R Sparrow, "Building a Better WarBot: Ethical Issues in the Design of Unmanned Systems for Military Applications" (2009) 15:2 Science and Engineering Ethics, 169-187.
- ✓ J D Herbach, "Into the Caves of Steel: Precaution, Cognition and Robotic Weapon Systems Under the International Law of Armed Conflict" (2012) 4:3 Amsterdam Law Forum, 3-20.
- ✓ N M Richards, W D Smart, "How Should the Law Think About Robots?" (2013) We Robot Conference
- ✓ C Cath, S Wachter, B Mittelstadt, M Taddeo, L Floridi: Artificial Intelligence and the 'Good Society': the US, EU, and UK approach. Science and Engineering Ethics, 1-24
- ✓ Singer, P. W. (2009). Military robots and the laws of war. The New Atlantis, 23, 25-45.
- ✓ Sharkey, Amanda, and Noel Sharkey. "Granny and the robots: ethical issues in robot care for the elderly." Ethics and Information Technology 14.1 (2012): 27-40.

- ✓ Steinert, Steffen. "The Five Robots—A Taxonomy for Roboethics." *International Journal of Social Robotics* 6.2 (2014): 249-260
- ✓ Ryan Calo: *Robotics and the Lessons of Cyberlaw*, *California Law Review*, Vol. 103, 2015

Background reading:

- ✓ M J Mataric, *The Robotics Primer* (MIT Press, 2007) chapters 1 and 3 (available creative commons)

Global Law Program – Visiting Professor

Course: Market Regulation: National and Transnational

Workload: 15 hours

Credits: 1

Overview:

The focus of the course would be the theory and practice of regulating markets at both the national and transnational level. The practice of market regulation would be focused on specific examples of market regulation tools, including transversal (such as competition law) and sectoral (telecommunications, energy and finance). The theoretical aspect of the course would focus on different theories that inform techniques of market regulation, including command and control (hierarchy), regulatory private law, responsive regulation and experimentalist governance. Finally, the course will also focus on transnational regulation by studying the role of international and regional regulatory networks and peer review on regulating market actors compared to the international treaty and organization model.

Class 1: Objectives and tools of market regulation:

- Economic vs. non-economic objectives of market regulation
- Competition as a regulatory mechanism and the role of private law
- Competition law as a market regulation tool

Class 2: Sectoral market regulation

- Reasons for sectoral vs. transversal market regulation: economic and non-economic (universal service)
- Examples from telecommunications, energy and finance

Class 3: Regulation of digital markets and internet platforms

- The problem of “free” services
- The role of data: data protection and competition law
- Case studies: Google, Facebook

Class 4: Theories of regulation

- Command and control (public law)
- Regulatory private law
- Responsive regulation: informal and self-regulation
- Experimentalist governance

Class 5: Transnational market regulation

- Unilateral enforcement and reasons for cooperation
- Regulatory networks in market regulation
- Developing country problems in transnational regulation

References:

To be defined.